

Studies on the Environmental Right as a Human Right (1)

— An overview in due course of
establishing the Environmental Right
as a New Fundamental Human Right —

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[I] The Environmental Pollution and The New risen Meaning of the Right to prevent that in Modern Countries

Recently, there are lots of problems of air, water, environmental pollution in our country. Therefore, to prevent that, "Environmental Right" was constituted as a human right in field of Constitutional theories. The environmental right, which has concretely driven from Article 13, and article 25 in our Constitution, is explained a kind of a new catalogue of the right to maintain life. In other words, the contains of this right mixed with both basic rights, for instance, the former article contains the rights to life, liberty, and the pursuit of happiness, and the latter one contains the right to maintain the minimum standards of wholesome and cultured living. In countries of Europe and surrounding the Pacific Ocean, there are countries that have comprehensive laws incorporating provisions against pollution and the protection of nature and the environment. Countries that do not have such provisions at present are currently preparing them, and it will not be long before they will be systemized legally. Especially, in some countries, propositions concerning the protection of the environment have been incorporated in their constitutions.⁽¹⁾ Professor Kato shows us a case of China as an example. Today, that country has a new Environmental Protection Law. The contents of that law involves an extremely wide scope of prevention and elimination of environmental pollution and the conservation of nature. It also include provisions for punishing violator of the law as well as compensation for victims of pollution. This, however, is a basic law, and in the future more detailed laws and regulations concerning the pollution of the air, water, etc., must be enacted under this comprehensive basic law. In other countries in Southeast Asia, I suppose that we can find the same phenomenon. It is often suggested that environmental problems in developing countries are considerably different from those existing in developed countries. The

first environmental problem that cropped up in the countries of South-east Asia was the urban problem. Overpopulation in large cities in these countries has created slumps, poverty, insanitary condition, and diseases, which are the major issues in the urban problem. It is very important for these countries to solve these problems, and this is why the environmental problem comes into focus. These problems, however, cannot be completely solved by environmental laws, which have their own limitation. In these condition of those undeveloped countries, Prof. Kato said 'Rather, they could be more successfully solved by policies and countermeasures implemented by the respective governments.'⁽²⁾

In fact, we recognize that there are two type countries surrounding the Pacific Ocean area. First type is in developing countries (undeveloped countries) and second type in developed, such as Philippines, Indonesia, Thailand, Malaysia and Singapore in former example and Korea, New Zealand, Australia, United States, Canada and Japan in later case. I have interesting about this different point of both type. And I have several real experiance of visiting in those developing countries by myself. I have been several times in Hong Kong, Thailand and Philippines. Particularly, when I visit Philippines with members of students of our University, we could take the opportunity to discuss with members of students of University of Philippines. On environmental pollution themes picking up from our side, many of ladies students present from U.P. side and they talked us severely on that subjects. I have deeply impressed that they want more developing of business economic than improving environmental pollution, because about 90 percent of nations of Philippines are extremely poor and 10 percent are standard or exceedingly rich. They also said that, although recognizing to destroy natural and environmental conditions, most people of Philippines are thinking to increase or produce foods production only. People hardly think pollution except a few.⁽³⁾ Definitely, they are demanding more improving vast personal income and living standards than protecting to such environmental problems as air, water and noise pollution. It is no doubt that our country's pollution different primarily from Phillipines's in this point. Our situation put into the problems to solve destroy of natural conditions, but pollution of Phillipines become into the urban problems. In Japanese case, although the rapid economic growth achieved by our Government in the postwar years resulted in a vast im-

provement in personal income and living standards, it also give such rising environmental problems as air, water, noise and other pollution. And in Southeast Asian countries, although these problems are aggravated during the process of economic development, they was brought in fact by the advanced foreign enterprise (of course, including Japanese companies). We must remark important news from oversea lately, for example, from forest country as Canada and New Zealand and mountain area and farming villages of Southeast Asian countries. There are lots of problem of over-cutting trees and forests. Although there also exist similar problems to those witnessed in town field, such as pollution of the air, water, soil and mobile gas from road, they have severe other pollution, such as broking down of mountain, destroy of forests, die of animals and plants by cutting trees. Many causes of those are driven by need of importing company of Japan and others for building of wooden house and making of tips of papers. Definitely, Japan is remarkable country about the most advanced research and development in science and technology. But, every countries persuit to take programs for promoting scientific and technological development in ways carefully chosen to improve the lives of their citizens and to contribute to the welfare of all mankind no regarding whether civilized countries or developing countries and whether urban realm or rural field.

I will briefly mention background of our science and technology here. Council for Science and Technology of Japan, the head advisory body in excutive matters relating to science, has specified six aims of the national policy in science and technology; (1) promotion of the stable supply and conservation of resources, (2) realization of a better living environment, as through the solution of environmental safety problems, (3) maintenance an improvement of health through improvements in hygiene and medical care, (4) promotion of pioneer and fundamental science and technology, (5) development of technical capabilities that will contribute to international harmony while assuring international competitive power, and (6) advancement of basic science. In addition of those, Japanese Government is also engaged in big national projects in nuclear power development, space exploration and ocean development and the Ministry of International Trade and Industry is pursuing research in three fundamental technical fields, which are new materials, biotechnology and new func-

tional devices, while the Ministry of Education is promoting research new energy sources, nuclear fusion, space science, oceanography and life science. In similarly, most of all scientific and technological research work is conducted by universities, special research institutions and private enterprises. In this conditions, we cannot ignore to spent much money (about two trillion seven hundred billion in 1980) on research in application technology and product development related research in private industry. All money on scientific and technological research was accounted four trillion six hundred billion yen in 1980. We can understand that private enterprises are carrying out the important role of researching in application and production related scientific and technology.⁽⁴⁾

After all, Japan, at present, is top ranking of scientific and technological field in the world, but it may depend on victims on forein countries, such as developing countries as Southeast Asia and forest or mountain villages as Canada, New Zealand and so on. Japan's Council for Science and Technology said above (2) and (3), 'realization of a better living environment, as through the solution of environmental safety problems,' 'maintenance and improvement of health through improvement in hygiene and medical care.' Nevertheless, in fact there is extremely difficult the harmony between preservation of natural environment and developing matters. Therefore, if environment is not for priority against developing, the natural environment never preserve at all.

[III] The Role of Environmental Right and Its True Meaning

I will refer "Environmental Right" in establishing now as a human right. This term is meaning also a new human right as well as the right to information in nowadays computer era, the right to life in peace and the educational right of nation and so on. Lately, among Japanese scholars of Constitutional Law, I can see lots of controversy about new human rights. And yet, I can say and recognize a principle that "An Environmental Right" is established. In the process of trial of pollution in our country, the right to live in good environmental atmosphere or the right to enjoy good surroundings has been recognized as more and more important than ever. We have several important experience of court cases on public nuisance (Kogai cases). Those example are so called 'the four kogai cases'; the cases of Minamata disease, Itai-itai disease, Niigata Minamata disease,

and Yokkaichi Asthma. These four major Kogai cases are the ones in which compensation after injury has occurred is sought. Therefore, there are always civil suits which were brought to court based on tort laws. Although trial of court, the Kogai compensation suits expanded new theories on cause-effect relationship, fault, limitation of endurance, and joint tort action.⁽⁵⁾

However, these suits are court cases brought after injury has occurred, and do not help recover the lost health or the lost clean air and water, even though the plaintiffs might win. Therefore, new theories of improving such demerit was needed. Those are theories of 'from kogai to protecting the environment' or 'from compensation suit to injunctive suit' and from kogai compensation suit to environmental protection suit.' This is meaning more important legal suits for environmental protection rather than compensation suits. I will propose that the right to live in good environmental atmosphere must be drawing from this point. Of course, environmental protection suits include the maintaining of natural resources such as forests, seacoast, good scenery, beautiful spots, and cultural assets. Plaintiffs in environmental protection suits seek injunctive actions against such activities of the defendant as a destroyer natural resources.

Environmental protection suits mainly employ two types of legal suits, a civil injunctive suit as above mention and a legal suit in administrative law. Noticeably, an injunctive suit has a preventive effect for protecting the environment, whereas a suit for compensation is usually brought to court after an injury has been done by polluters.⁽⁶⁾ Maybe, in next paper, I will mention standing to sue, cause effect relation, illegality and so forth in a legal suit in administrative law and in an injunctive suit in civil law.

Now, the right to live in good environmental atmosphere means that our national people require the State and the local government bodies the environmental pollution control for the protection of the people's health and the conservation of their living environment. And we can find that the definition of the term "environmental pollution", the responsibility of the State and the local government bodies is enacted in the Basic Law for Environmental Pollution Control (law no. 132, aug. 3, 1967). The definition "environmental pollution" is enacted as follows: '(1) The term "environmental pollution", as used in this Law, shall mean any situation in which human health and the living environment are damaged by air

pollution, water pollution, soil pollution, noise, vibration, ground subsidence, and offensive odors, which arise over a considerable area as a result of industrial or other human activities. (2) The term "living environment," as used in this Law, shall include property closely related to human life, and animals and plants closely related to human life and the environment in which such animals and plants live.'⁽⁷⁾ This Law pointed out seven kinds of pollution in this article. But these are typical representative kinds of pollution in our country, also we can see others, the right to receive sunshine and so forth. The responsibility of the State and local government bodies are enacted as follows: 'The State has the responsibility to establish fundamental and comprehensive policies for environmental pollution control and to implement them, in view of the fact that it has the duty to protect the people's health and conserve the living environment.'⁽⁸⁾ 'In order to protect the health of the local population and to conserve the living environment, local government bodies shall take measures in line with the policy of the State and shall also work out and implement appropriate measures for environmental pollution control which take into account the specific natural and social condition of the area concerned.'⁽⁹⁾ And also, this Law enacted the responsibility of the enterprise in article 3.

(Footnote)

- (1) Ichiro Kato, 'Environmental Laws in Southeast Asia and China' Environmental Law and Policy in the Pacific Basin Area, p. 2. He mentions major cases of pollution and environmental protection laws of China in this article.
- (2) Ibid., p. 2.
- (3) CHUNICHI SHINBUN (Chunichi daily newspaper) 1st, June, 1978. ASAHI SHINBUN (Asahi daily newspaper) 29th, May, 1979. And also CHUNICHI. 29th, May, 1979. These newspapers take up our trip for Phillipines and introduce the view of headed discussion with members of law students of University of Phillipines.
- (4) In recent time, the outstanding, trouble-free performance of Japanese industrial products has earned technology in making small, complex articles a good reputation in oversea, of course, in the field of the manufacture of such products as small cars and motor-bicycle, miniature TV set, cameras, hand-held calculators and watches.

- (5) Nobuo Kumamoto, 'Recent Tendencies and Problems of Court Cases on Environmental Protection in Japan' *Environmental Law and Policy in the Pacific Basin Area*, p. 85.
- (6) N. Kumamoto, *ibid.*, p. 86
- (7) See, Article 2, Basic Law for Environmental Pollution Control (law No. 132, Aug. 3, 1967)
- (8) See, Article 4, Basic Law.
- (9) See, Article 5, Basic Law.